S T A T E O F N E W Y O R K

3093--A

Cal. No. 665

2011-2012 Regular Sessions

I N S E N A T E

February 8, 2011

Introduced by Sens. ROBACH, ADDABBO, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the state finance law, in relation to the cost effectiveness of consultant contracts by the state agencies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 163 of the state finance law is amended by adding a new subdivision 15 to read as follows:

15. CONSULTANT SERVICES. A. BEFORE A STATE AGENCY ENTERS INTO A CONTRACT FOR CONSULTANT SERVICES WHICH IS ANTICIPATED TO COST MORE THAN FIVE HUNDRED THOUSAND DOLLARS IN A TWELVE MONTH PERIOD THE STATE AGENCY SHALL CONDUCT A COST COMPARISON REVIEW TO DETERMINE WHETHER THE SERVICES TO BE PROVIDED BY THE CONSULTANT CAN BE PERFORMED AT EQUAL OR LOWER COST BY UTILIZING STATE EMPLOYEES, UNLESS THE CONTRACT MEETS ONE OF THE EXCEPTIONS SET FORTH IN PARAGRAPH B OF THIS SUBDIVISION. AS USED IN THIS SECTION, THE TERM "CONSULTANT SERVICES" SHALL MEAN ANY CONTRACT ENTERED INTO BY A STATE AGENCY FOR ANALYSIS, EVALUATION, RESEARCH, TRAINING, DATA PROCESSING, COMPUTER PROGRAMMING, ENGINEERING, ARCHITECTURE, ENVIRONMENTAL, HEALTH SERVICES, MENTAL HEALTH SERVICES, ACCOUNTING, AUDITING, OR SIMILAR SERVICES, BUT SHALL NOT INCLUDE LEGAL SERVICES OR SERVICES IN CONNECTION WITH LITIGATION INCLUDING EXPERT WITNESSES AND SHALL NOT INCLUDE CONTRACTS FOR CONSTRUCTION OF PUBLIC WORKS. FOR PURPOSES OF THIS SUBDIVISION, THE COSTS OF PERFORMING THE SERVICES BY STATE EMPLOYEES SHALL INCLUDE ANY SALARY, PENSION COSTS, OR OTHER BENEFITS INCLUDING ANY INCREMENTAL COSTS THAT ARE REQUIRED FOR EQUIPMENT, FACILITIES OR OTHER OVERHEAD. THE COSTS OF CONSULTANT SERVICES SHALL INCLUDE THE TOTAL COST OF THE CONTRACT PLUS ANY COSTS INCURRED BY THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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AGENCY IN ADMINISTERING THE CONTRACT OVER AND ABOVE THE COSTS WHICH WOULD HAVE BEEN INCURRED BY THE AGENCY IF SUCH SERVICES HAD BEEN PERFORMED BY STATE EMPLOYEES. THE COST COMPARISON SHALL BE EXPRESSED WHERE FEASIBLE AS AN HOURLY RATE, OR WHERE SUCH A CALCULATION IS NOT FEASIBLE, AS A TOTAL ESTIMATED COST FOR THE ANTICIPATED TERM OF THE CONTRACT.

B. A COST COMPARISON SHALL NOT BE REQUIRED IF:

(I) THE SERVICES ARE INCIDENTAL TO THE PURCHASE OF REAL OR PERSONAL PROPERTY; OR

(II) THE CONTRACT IS NECESSARY IN ORDER TO AVOID A CONFLICT OF INTEREST ON THE PART OF THE AGENCY OR ITS EMPLOYEES; OR

(III) THE SERVICES ARE OF SUCH A HIGHLY SPECIALIZED NATURE THAT IT IS NOT FEASIBLE TO UTILIZE STATE EMPLOYEES TO PERFORM THEM OR REQUIRE SPECIAL EQUIPMENT THAT IS NOT FEASIBLE FOR THE STATE TO PURCHASE OR LEASE; OR

(IV) THE SERVICES ARE OF SUCH AN URGENT NATURE THAT IT IS NOT FEASIBLE TO UTILIZE STATE EMPLOYEES; OR

(V) THE SERVICES ARE ANTICIPATED TO BE SHORT TERM AND ARE NOT LIKELY TO BE EXTENDED OR REPEATED AFTER THE CONTRACT IS COMPLETED.

C. NOTHING IN THIS SECTION SHALL BE DEEMED TO AUTHORIZE A STATE AGENCY TO ENTER INTO A CONTRACT WHICH IS OTHERWISE PROHIBITED BY LAW.

D. ALL DOCUMENTS RELATED TO THE COST COMPARISON REQUIRED BY THIS SUBDIVISION SHALL BE PUBLIC RECORDS SUBJECT TO DISCLOSURE PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

S 2. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the amendments to section 163 of the state finance law made by section one of this act shall not affect the repeal of such section and shall be deemed to repeal therewith.